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10/501,157	07/12/2004	Guy Borgeat	AP020-04	5350

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EXAMINER

KOCH, GEORGE R

ART UNIT PAPER NUMBER

1734

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/501,157

Applicant(s)

BORGAT, GUY

Examiner

George R. Koch III

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-17 is/are pending in the application.
- 4a) Of the above claim(s) 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 7/29/2005. These drawings are accepted by the Examiner.

Election/Restrictions

2. Newly submitted claim 17 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:
3. Inventions I (claim 17) and I (claims 2-16) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used a materially different method such as one which uses a product filler to manufacture bags filled with potato chips.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 17 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 2-16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moreillon (WO 99/61232) in view of Luhman (US 3,938,298).

Moreillon discloses a machine (see Figure 1) for making air cushions for packaging from a tubular film (item 1) comprising a body as claimed, an inflating device as claimed (item 5 and related structure), a welding device as claimed (item 6), a first actuator as claimed (item 13), a second actuator as claimed (item 11) and a film traction device as claimed (item 8). Moreillon discloses an elongated element (item 25), but utilizes a different stop element (item 26). It should be noted that most of the French portions of Moreillon match up with the French version of this application which was filed with the international office.

However, Moreillon does not disclose a frame or that the means for preventing the escape of air comprise an elongated element extending in a transverse direction attached to the first beam in such a way as to be held away from the film while the latter is being moved and introduced into a recess provided in a plate on the frame of the machine to force the film into the recess to form a sealed fold in the latter.

Luhman discloses similar means for preventing the escape of air comprise an elongated element (Figure 7, item 83) extending in a transverse direction attached to the first beam (pressing plate 80) and in such a way as to be held away from the film while the latter is being moved and introduced into a recess provided in a plate (item 81, see Figure 4) on the frame of the machine to force the film into the recess to form a sealed fold in the latter. One in the art would appreciate that such an element ensures proper pressing and formation of the air cushion. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use such means in order to improve pressing and formation of the air cushion.

Independent claim 12 is also rejected under the same rationale as applied in claim 2. Moreillon also discloses the thrust bar, serrated knife, and film traction device.

As to claim 3, Moreillon discloses that the body rests on two bars (items 4) disposed outside the tubular film, the bars being separated by a distance less than the external diameter of the body (see Figure 1).

As to claim 4 and 13, Moreillon discloses a fluid compressor (see page 3, lines 20-21, which disclose, in French, a compressor - un compresseur).

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As to claim 5 and 6, Morellion discloses two heating bars, one over each other, as claimed (see page 6, lines 1-9, which disclose the two heating bars in French).

As to claim 7, Morellion discloses a serrated knife (item 12).

As to claim 8, Morellion discloses that the knife is attachable to the second beam and located between the heating bars (see Figure 1 and French specification).

As to claim 9, Morellion discloses as least two cylinders (items 19 and 19a), and a motor/gear assembly (items 23, 24).

As to claim 10 and 15, Morellion discloses that the cylinders are coated with flexible and elastic material (page 4, lines 16-24).

As to claim 11 and 16, Morellion discloses that this material is foam rubber (page 4, line 20, in French, "caoutchouc mousse").

As to claim 14, Morellion discloses that the cylinders of the traction device (see Figure 3) have ends of greater diameter than the central part in order to function as claimed.

Response to Arguments

7. Applicant's arguments filed 7/29/2005 have been fully considered but they are not persuasive. Applicant's argument is that small differences can be patentable. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

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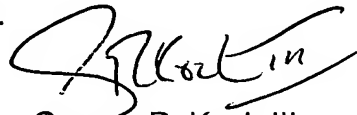
See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). While this is true that small differences can be patentable, the fundamental portions of the invention are disclosed in the Morellion reference, and the frame in the Luhman reference. It is unclear why replace the bar (item 26) as in Morellion with the frame/recessed member structure as claimed would not be obvious to one of ordinary skill in the art, especially in light of the Luhman reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Koch III whose telephone number is (571) 272-1230 (TDD only). If the applicant cannot make a direct TDD-to-TDD call, the applicant can communicate by calling the Federal Relay Service at 1-866-377-8642 and giving the operator the above TDD number. The examiner can normally be reached on M-Th 10-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



George R. Koch III
Patent Examiner
Art Unit 1734

GRK
10/13/2005



CHRIS FIORILLA
SUPERVISORY PATENT EXAMINER

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